IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO. 646 OF 2001

Municipal Corporation for Greater Bombay. ...Petitioner.

Versus

Sharda Dyeing & Printing Works & Ors. ...Respondents.

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Mr. H. Toor i/b. Cr.Bayley & Co. for the Petitioner.

Mr. Tejas Vora i/b. Ms. Neeta Parikh for Respondent No.1.

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CORAM : DR. D.Y. CHANDRACHUD, J.

February 4, 2005.

ORAL JUDGMENT:

The First Respondent is a consumer of the Bombay Electric Supply and Transport Undertaking and carries on the business of dyeing and printing. The First Respondent has derived electric supply through three meters situated at the premises of the

factory. Meter D-833723 was being used for commercial purposes while Meters 0273715 and 0442967 were being used for industrial purposes. The consumption pattern on Meter 0442967 showed that there was a sudden and considerable drop in consumption from 3rd May 1994. The meter was checked by the Deputy Engineer in the Energy Audit Department of the Petitioner on 7th December 1995 in the presence of a representative of the First Respondent. On being checked, it was found that the meter was under-recording the consumption of electricity by 65.76% due to the Secondary Circuit of the Current Transformer being open on the red and yellow phases and because of a loose potential connection on the red and yellow phases. According to the Petitioner, in ordinary parlance what this meant was that the wires connecting the current transformer and the meter of the red phase and yellow phase were open, as a result of which, the supply through the red and yellow phases was not fed to the meter which was recording the consumption of the consumer. Hence, according to the Petitioner, though the supply was being used by the First Respondent as usual, due to the loose connection in

wiring, the consumption which was recorded in the meter was 1/3rd of the actual and hence 2/3rd of the supply was not recorded. On this aspect of the matter, parties, it is evident, are ad idem. In paragraph 6 of the Writ Petition filed by B. E. S. T. Undertaking, there is the following averment in regard to the cause for the under-recording of the electricity consumption to the extent of 65.76%:

> "On the said meter being checked it was found that the said meter was under recording consumption by 65.76 per cent due to the C.T. Secondary Circuit being open on the Red and Yellow Phase and due to loose potential connection on the Red and Yellow Phase. In ordinary parlance, what it really means is that the wire connecting the current transformer and the meter of the Red Phase and Yellow Phase were open. As a result of which the supply through Red Phase and Yellow Phase respectively were not been fed to the meter which records the consumption of the consumer. Thus even though the supply was being used by the 1st Respondent as usual, due to the above disconnection in wiring, the consumption recorded on the meter was only one third and hence two third of the consumption of supply was not recorded on the meter."

In so far as this averment is concerned, there is an admission in the following terms in para 9 of the affidavit in reply:

> "It is true that due to the defect in the connection of Current Transformer (C.T.) and Meter of Red Phase and Yellow Phase, the Meter was not giving proper reading."

2. At this stage, it would be worthwhile to advert to the working of a C.T. operated meter. In meters through which supply for loads upto 100 Amps. is derived, the electricity supplied to the consumer passes through the meter itself and is recorded by the meter. However, for consumption with higher installed loads, it is not possible for the entire current consumed to pass through the meter as that would require a meter of an extremely large size. Thus, the meter is connected parallel to the main supply line of the consumer. A current transformer is installed for each phase supplied to the consumer (red, yellow and blue phases) which allows a proportionately small quantity of electricity to pass through the meter, which is then recorded by the meter. The meter thus has a multiplier factor by which the actual recording by a meter is required to be multiplied in order to record actual electricity consumed. For instance, if a meter has a multiplier factor of 20 and the meter indicates 1000 units as having been

consumed, the actual consumption of the consumer would be 20,000 units. The current transformer is connected to the meter by wires thorough which the meter receives electricity.

3. In the present case, as a result of a defect in the wiring, the meter recorded only 1/3rd of the actual electricity consumed by the First Respondent. The meter was tested in the presence of a representative of the First Respondent and a site testing report dated 7th December 1995 was accordingly prepared and was signed by the said representative of the First Respondent. No dispute was raised at that stage. The testing report showed that the meter was slow beyond permissible limits; that the red and yellow phases to the current transformer were open and that connections of the potential of the red and blue phases on the terminal block were found to be loose. In order to ascertain the actual amount of electricity that was consumed by the First Respondent, a check meter was installed on 20th December 1995 after which the recording of consumption on the erstwhile meter completely stopped. There was, as noted earlier, a

sudden drop in the meter recording from 3rd May 1994 and in order to assess the consumption of electricity, the First Respondent took the base period as 30th April 1993 to 3rd May 1994, a period of one year prior to the drop in consumption. The average monthly consumption was computed on this basis which worked out to 49,436 units per month. This average consumption was then applied for the period during which the meter had under recorded consumption of electricity viz., 3rd May 1994 till 20th December 1995. After giving credit to the First Respondent for the amount which was already paid, a supplementary bill in the amount of Rs.30,54,266.99 was submitted to the First Respondent for the period 3rd May 1994 to 20th December 1995.

4. On 2nd January 1997, the First Respondent submitted a representation to the Petitioner. In the representation, the First Respondent claimed that in December 1988, the factory was given on lease and that after a period of approximately three years, labour problems erupted which resulted in a go slow agitation. According to

the First Respondent, a notice of closure was put up on 10th June 1994. On 1st August 1994, an agreement was executed but the lessee, according to the First Respondent, was not able to get enough work as his financial condition was weak. Hence, thereafter, another proposal came forth for giving the factory on lease and accordingly the factory was handed out for a period of time. After this, the factory was leased out again from 18th March 1996. The sum and substance of the contention of the First Respondent was that the factory had been leased out successively to four conductors and that the decline in electrical consumption was because the factory had not been conducted properly. The First Respondent, it must be noted, specifically stated that there was no error in the meter. Moreover, the First Respondent stated that the process of work in the factory was a continuous process so that even if one machine was working, others had to be kept working though there were no goods to be fed in the machines. As such even with less work, the power consumption would remain the same. The representation of the First Respondent dated 2nd January 1997 was to the effect that the meter was correct,

but that it was due to a deficiency in the conducting of the factory that a lesser consumption of electricity was recorded. On 28th May 1997, the Petitioners responded to the representation and drew the attention of the First Respondent to the effect that his case could be taken up by the Review Committee. At the same time, it was also observed that though the contention of the First Respondent was to the effect that the factory had remained closed for six months, the record revealed that three electric meters feeding supply to the factory had never shown zero consumption during the said period and it was difficult to accept the contention that the factory was completely closed.

5. Proceedings took place before the Review Committee on 25th September 1997. Minutes of the proceedings on that date recorded the submission of the First Respondent that the factory had been handed over to conductors after 1988 and that there were labour problems. The attention of the First Respondent was, however, drawn to the fact that immediately after a substitute electronic billing meter was installed on 20th December 1995, the

electrical consumption had increased and that during the disputed period only 1/3rd of the normal consumption had been recorded "due to open circuiting of C.T. wires on two phases and loose connection of potential wires on two phases." The First Respondent was furnished an opportunity of producing documents in proof of the closure of the factory during the period 3rd May 1994 and 20th December 1995, the period of amendment. In the meantime, the First Respondent was called upon to make an ad-hoc deposit of Rs. 2.5 lakhs towards the claim of the undertaking. A further meeting took place before the Review Committee on 23rd October 1997 in which it was recorded that the First Respondent had neither made any payment as requested, nor produced any document in regard to proof of closure during the period of amendment. Reminders were addressed to the First Respondent on 2nd January 1998 and 29th July 1998 and he was informed that the decision which the Review Committee would take would ultimately bind him.

6. On 20th April 1999, the First Respondent moved the

Electrical Inspector under Section 26(6) of the Indian Electricity Act, 1910. The application which was filed by the First Respondent is significant, in that he reiterated his case that low consumption of electricity was on account of the alleged closure of the factory and stoppage of production and due to the absence of a full utilization of the machinery during the relevant period. According to the First Respondent, it must be noted, there was in fact, no defect in the old meter that had been replaced.

7. In reply to the application filed by the First Respondent before the Electrical Inspector, the Petitioner specifically raised an objection to the jurisdiction of the Inspector under Section 26(6). In paragraph 10 of the reply, the Petitioner averred thus:

> "In the present case, there is no dispute about the fact that the said meter No.0442967 was working slow beyond permissible limit as its R-Phase and Y-Phase C. T. S. were found open and also potential connections of R-Phase and Y-Phase at terminal block were found loose and thereafter it had completely stopped after the installation of a Check Meter on 20-12-1995. Therefore, such a stopped meter does not come within a purview of this Hon'ble Authority for the reason that the meter had ceased to function and not

ceased to be correct."

8. The Electrical Inspector decided the issue by his order dated 9th September 1999. In the prefatory part of the order, the Inspector recorded that the consumer objected to the amendment of the bill on the ground that the bill was "excessively high". The Inspector stated that the complaint was converted into a dispute and was accepted under Sections 24 and 26(6) of the Indian Electricity Act, 1910. The Petitioner had specifically challenged the jurisdiction of the Inspector, but that was turned down on the following grounds:

> "BEST is arguing in their say dt. 13-8-99 that the dispute is not maintainable under section 26(6) as consumer had not disputed correctness of meter but exorbitant bill. In this respect actually meter detected faulty on 7.12.95, no information is given to consumer about possible percentage error and billing average but directly claimed the bill after one year."

9. The Petitioner carried the matter in appeal. Before the Appellate Authority, the jurisdiction of the Electrical Inspector under Section 26(6) was questioned on the ground that the drop in

consumption to the extent of 65.76% was on account of defective wiring and not due to a defect or fault in the meter. Consequently, it was urged that Section 26(6) would not be attracted since this was not a case where the meter was defective. In so far as the finding of the Electrical Inspector on the issue of jurisdiction was concerned, it was also submitted thus, in the memo of appeal:

> "The Electrical Inspector erred in coming to the conclusion that the Undertaking has not intimated the consumer regarding testing, possible percentage error and billing average but directly claimed the bill after one year. The Record indicates that the intimation was given to the consumer which was duly acknowledged by the representative of the consumer on 7.12.1995 and that he was personally present when the testing was actually carried out by the Deputy Engineer, Energy Audit Department of the Undertaking."

A direction was sought before the Appellate Authority in terms of Section 24(2) of the Act that the First Respondent be directed to deposit the disputed amount of Rs.25,54,266.99 as required by law. No directions to that effect, it is common ground, were issued by the Appellate Authority.

10. The Appellate Authority decided the appeal by its order dated 29th May 2000. In so far as the maintainability of the appeal is concerned, the finding of the Appellate Authority was thus:

> "The meter of the consumer and its wiring are independent and separate. The meter was not defective, but since the wiring was defective, the correct consumption was not recorded on the meter. This clarification of the BEST does not appear to be correct. This is because meter and it's CT are interrelated and it is an essential part of the metering system. Without CT, the consumption of the meter (here meter means CT operated meter) cannot be recorded. In other words, if C.T. is defective, then the reading of the consumption cannot be recorded properly. This is clear. Hence it is essential that the CT of the meter should be correct, otherwise it cannot be said that the meter is correct. ... Hence it is essential that the CT of the meter and the meter both these parts should be correct. Without this, the calculation of the amount of electricity consumed cannot be correct. This is my firm view. Hence Section 26(6) of the Indian Electricity Act, 1910 is applicable in this matter and the supplementary bill of this meter cannot exceed for more than six months, and the Electrical Inspector can only decide the calculation of the amount of supply used."

11. In the circumstances, the Appellate Authority has directed that a supplementary bill should be prepared for a period of six months prior thereto on the basis that the meter was recording

34.24% of the consumption of electricity instead of 100%.

12. The decision of the Appellate Authority is questioned in these proceedings under Article 226 of the Constitution. Counsel appearing on behalf of the Petitioner urged that: (i) The defect in the present case was in the wiring connecting the current transformer to the meter which was loose; (ii) It is a settled principle of law that the jurisdiction of the Electrical Inspector under Section 26(6) would not be attracted where under recording of consumption is on account of a defect in wiring or due to loose wiring; (iii) In the present case, there was no dispute either about the correctness of the current transformer or the electrical meter; (iv) The 1st Respondent never raised any dispute either in regard to the correctness of the meter or of the current transformer either when the investigation was carried out or at any stage subsequent thereto; (v) In these circumstances, neither did the Electrical Inspector have any jurisdiction to entertain the complaint under Section 26(6), nor are the reasons which have been set up in his order and in the order of the Appellate Authority

sustainable; and (vi) The conduct of the First Respondent was lacking in bona fides and that there were serious latches on the part of the First Respondent in moving the Electrical Inspector. Neither was a notice of 7 days furnished to the Petitioner as required by the proviso to Section 26(6), nor, despite a specific request of the Undertaking did the First Respondent deposit the disputed amount of electricity charges as required under Section 24(2). For all these reasons, it was urged that the intervention of this Court in the exercise of its jurisdiction under Article 226 is warranted.

13. On the other hand, on behalf of the First Respondent, Counsel submitted that: (i) Having regard to the nature of the fault which was discovered by the Petitioner, the meter can be termed as faulty or defective under Section 26(6) because the current transformer is a part of the meter; (ii) Once the meter is found to be faulty or defective, the Electrical Inspector alone had jurisdiction under Section 26(6); (iii) Once the Electrical Inspector had jurisdiction, the bill cannot be revised for more than six months; (iv) The orders

passed by the Electrical Inspector and the Appellate Authority are correct; and (v) The Petitioner failed to establish the point of time at which the meter had become faulty. These submissions may now be considered.

14. Section 26(6) of the Indian Electricity Act, 1910, conditions the jurisdiction of the Electrical Inspector on the existence of a difference or dispute on whether a meter installed at the premises of the consumer is or is not correct. The existence of such a dispute or difference is condition precedent to the exercise of the jurisdiction of the Electrical Inspector. Section 26(6) provides thus:

> "26(6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector, and where the meter has in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity;

> Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do."

15. In a long line of authority, it is now a settled principle of law that if there is no dispute in regard to whether the matter is defective, the fundamental requirement for the exercise of jurisdiction under Section 26(6) would be absent and that such a dispute cannot be entertained by the Electrical Inspector. This position is now reiterated in a decision of three Learned Judges of the Supreme Court in **Tata Hydro Electric Power Supply Co.Ltd. Vs. Union of India,** AIR 2003 SC 1581 where Mr.Justice B.P. Singh speaking for the Bench held thus:

> "Where there is no dispute that the meter is defective, such a dispute is not one contemplated by sub-section (6) of section 26 of the Act. It is no doubt true that if a dispute as contemplated by sub-section (6) of Section 26 of the Act arises, the matter has to be referred to the Electrical Inspector, and in view of the statutory provisions private arbitration in the case of such a dispute is not permissible in law. However, if there is no dispute as to whether the meter is defective or not, there is nothing which prevents the parties from referring their other disputes to arbitration

> for determining the liability of the consumer in such cases,. It is only where any difference or dispute arises as to whether any meter referred to in sub-section (1) of Section 26 is or is not correct, that dispute has mandatorily to be resolved by the Electrical Inspector."

16. The second fundamental principle which must guide the decision of the present case is that the jurisdiction of the Electrical Inspector being to adjudicate when there is a dispute whether the meter is or is not correct, a mere dispute in regard to a fault in the wiring does not fall within the ambit of Section 26(6). This principle was initially laid down in a judgment of a Learned Single Judge of the M.P. High Court (U. N. Bachavat, J.) in **M. P. Electricity Board vs. Chhaganlal,** AIR 1981 MP 170. The Learned Judge held there that the expression "meter is correct" would mean that there is no fault or defect in the meter and conversely, "meter is not correct" would mean that the meter is defective – that there is a fault in the meter. However, where there was no fault in the meter but the fault was in wiring due to which the total energy which was consumed by the consumer did not pass through the meter (in that case because of the

non-supply of ' Ypotential to the meter), this defect could not be held to be a defect in the meter. Consequently, the jurisdiction under Section 26(6) would not be attracted. This decision of the M.P. High Court was specifically affirmed by the Supreme Court in **M.P. E.B. vs. Smt. Basantibai**, AIR 1988 SC 71. The observations of the Learned Single Judge of the M.P. High Court were adverted to in para 11 of the Judgment of the Supreme Court and were approved and the contrary view was not accepted. Following this principle, a Division Bench of the Kerala High Court, held in **M/s.Southern India Marine Products Co. (Pvt.) Ltd. vs. Kerala State Electricity Board,** 1995 AIHC 4959 that the Electrical Inspector does not have jurisdiction under Section 26(6) when there is a defect in the wiring and so long as there is no defect in the meter itself, no question arises as to whether the meter is correct or not. The same view has been taken by a Division Bench of the Patna High Court in **Bihar State Electricity Board vs. Shree Plywoods (Pvt) Ltd.,** AIR 2002 Patna 84, wherein it was held that where a case involving melting of wire resulted in the loss of current in one of the phases and consequently, of incorrect

recording of energy, it would not fall within the purview of Section 26 (6).

17. Now the facts of the present case have to be scrutinised in the back drop of these principles which are settled. It appears both from the pleadings as well as the contemporaneous conduct of the parties that there was no dispute between them in regard to the cause which led to the under recording of electrical consumption in the meter that was installed by the BEST Undertaking. The cause which is adverted to in para 6 of the Petition has been extracted in the earlier part of the order and to which there a reply in para 9 of the affidavit filed by the First Respondent. Both the parties have expressly proceeded on the basis that the reason why electricity consumed was under recorded by 67.76% was because the second circuit on the red and yellow phases was open and because of a loose potential connection with red and yellow phases. The First Respondent in its reply specifically admits that “it is true that due to a defect in connection of the current transformer and the meter of red

phase and yellow phase, the meter was not" recording a proper reading. The First Respondent raised no dispute when the meter was tested in his presence on 7th September 1995. Even when the First Respondent moved the Undertaking with a representation dated 2nd January 1997, the express averment therein was that there was no defect in the meter at all and that the lower consumption of electricity was due to the problems that the factory had faced. On an opportunity being granted by the Undertaking, the First Respondent then moved the Review Committee. The submission recorded before the Review Committee in the Minutes dated 25th September 1997 again was that the lower consumption of electricity was due to the fact that the Factory was handed over to various conductors and because of labour problems that were faced in the factory resulting in a closure for a certain period of time. At that stage, the First Respondent was informed again that the under recording was due to open circuiting of the C.T. wire at two phases and loose connection of the potential wire on two phases. The First Respondent took time to produce documents in support of his submission that the factory remained

closed during the period for which the bill had been amended. He, however, chose not to produce any document in support of his own case. Belatedly on 20th April 1999 or thereabout, reference was made to the Electrical Inspector. Even in the application before the Electrical Inspector, the case of the First Respondent was that there was no defect in the meter and that the lower consumption of electricity was on account of a stoppage of production. The Undertaking on its part recorded in its reply before the Electrical Inspector that the meter was working slow beyond permissible limits as the R & Y phases were found open and because the potential connection of two phases on the terminal meter was found to be loose.

18. On this state of record, there is in my opinion, merit in the submission which was urged on behalf of the Petitioner that the jurisdiction of the Electrical Inspector would not have been invoked. The condition precedent to the invocation of the jurisdiction of the Electrical Inspector and to the exercise of that jurisdiction is a dispute

as to whether a meter is or is not correct. In the present case, the First Respondent did not dispute the factual position that there was nothing intrinsically wrong or erroneous with the meter. In fact, his case was that the lower consumption of electricity was due to the problems which were faced by him in his own factory. In so far as the Undertaking was concerned, its case also was that there was nothing intrinsically wrong about the meter but there was an under recording of electricity consumed to the extent of 66% because of the defect in wiring associated with the current transformer.

19. Both the Electrical Inspector and the Appellate Authority have been fundamentally in error in the view which they took in affirming their own jurisdiction on the ground that though the meter was detected to be faulty on 7th December 1995, "no information was given to the consumer about a possible percentage error and billing average, but that a bill was directly served on him after a lapse of one year". In the Memo of Appeal that was filed before the Appellate Authority, the Petitioner pointed out that the Inspector erred in

coming to this conclusion since the record indicated that intimation was given to the consumer which was duly acknowledged by his representative on 7th December 1995 and that he was personally present when the testing was carried out by the Energy Department of the Undertaking. The order of the Appellate Authority, to say the least, shows a complete non-application of mind to the issue of jurisdiction. The Appellate Authority held that the meter and its wiring are independent and separate. Of this position there can be no dispute. The Appellate Authority notes that the meter and its current transformer are inter-related and that without the C.T., the consumption on the meter cannot be recorded when there is a C.T. operated meter. Again there can be no dispute about this proposition, nor indeed in the view of the Appellate Authority that if there is a defect in the meter, it cannot record a proper reading. The Appellate Authority held that it is essential that the C.T. of the meter and the meter should both be correct. Having said this, the Appellate Authority then proceeded to hold that Section 26(6) was applicable and that a supplementary bill could not exceed a period of six

months. The conclusion of the Appellate Authority does not flow from its premise. What the Appellate Authority completely lost sight of was the absence of any dispute between the parties on the fact that both the meter and the C.T. were correct. Once that was the position, then a defect in the wiring would not attract the jurisdiction under Section 26(6). This is the clear position in law enunciated by the Supreme Court.

20. In the circumstances, I am of the view that the Petitioner is entitled to succeed and that the impugned order of the Appellate Authority dated 29th May 2000 has to be quashed and set aside. The order of the Appellate Authority dated 29th May 2000 is accordingly quashed and set aside and the dispute filed by the First Respondent before the Electrical Inspector under Section 26(6) of the Indian Electricity Act, 1910 shall stand dismissed. In the event that the First Respondent has paid any part of the disputed bill, due credit shall be given in arriving at the amount which is now due and payable. The First Respondent shall pay the balance which is due and payable under the supplementary bill within a period of six weeks failing which

the Petitioners would be at liberty to take necessary steps in accordance with law.

21. The Petition is accordingly allowed in the aforesaid terms. There shall be no order as to costs.

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